

**Letter of Findings: 65-20191383  
Indiana Oversize/Overweight Proposed Assessment  
For the Year 2018**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Indiana Department of Revenue's (the "Department") official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

### HOLDING

The Department sent Motor Carrier a proposed assessment for two oversize/overweight civil penalties for violating a permit it should have obtained from the Department and, in addition, for failing to obtain a permit. The Department determined that Motor Carrier should only be assessed a penalty for not obtaining a permit and not for violating the terms of the permit. Therefore, Motor Carrier's protest is sustained in part and denied in part.

### ISSUE

#### **I. Motor Vehicles - Oversize/Overweight Penalty.**

**Authority:** IC § 6-8.1-5-1; IC § 6-8.1-1-1; IC § 9-20-1-1; IC § 9-20-1-2; IC § 9-20-3-4; IC § 9-20-6-11; IC § 9-20-18-14.5; *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Motor Carrier protests the assessment of two oversize/overweight civil penalties.

### STATEMENT OF FACTS

Motor Carrier does business in Indiana. On June 13, 2018, Motor Carrier's commercial motor vehicle was cited by the Indiana State Police ("ISP") for an oversize violation. As a result, the Department issued Motor Carrier a proposed assessment for two oversize/overweight ("OS/OW") civil penalties. Motor Carrier disagreed with the assessment of penalties and submitted a protest to that effect. This Letter of Findings results. Further facts will be supplied as necessary.

#### **I. Motor Vehicles - Oversize/Overweight Penalty.**

### DISCUSSION

Motor Carrier protests the imposition of two civil penalties. The Department based its proposed assessment on a report provided by the ISP. The ISP report showed that Motor Carrier was transporting a load in excess of the length allowed under IC § 9-20-3-4. The Department's internal records showed that Motor Carrier did not possess an oversize permit at the time of the traffic stop.

As a threshold issue, it is Motor Carrier's responsibility to establish that the existing proposed assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "[t]he notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

According to IC § 9-20-1-1, "[e]xcept as otherwise provided in [IC Art. 9-20], a person, including a transport operator, may not operate or move upon a highway a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in [IC Art. 9-20]."

According to IC § 9-20-1-2, "an owner of a vehicle . . . may not cause or knowingly permit to be operated or moved upon a highway a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in [IC Art. 9-20]."

According to IC § 9-20-6-11(b), "[a] person may not violate the terms or conditions of a special permit."

IC § 9-20-18-14.5 authorizes the Department to impose civil penalties against Motor Carriers that obtain a permit under IC Art. 9-20 and violate IC Art. 9-20 ("Permit Violation Civil Penalty") or are required, but fail, to obtain a permit under IC Art. 9-20 ("No Permit Civil Penalty"). IC § 9-20-18-14.5(c) provides that a person "a person who transports vehicles or loads subject to this article and fails to obtain a permit required under this article is subject to a civil penalty of not more than five thousand dollars (\$5,000) for each violation." According to IC § 9-20-18-14.5(b), the Department may subject a person to a civil penalty if the person "obtains a permit under" IC Art. 9-20 and violates IC Art. 9-20 by being overweight or oversize.

IC § 6-8.1-1-1 states that fees and penalties stemming from IC Art. 9-20 violations are a "listed tax." According to IC § 9-20-18-14.5(a)(3), these listed taxes are in addition to and separate from any arrangement or agreement made with a local court or political subdivision regarding the traffic stop.

In this case, the Department issued Motor Carrier a No Permit Civil Penalty. According to the ISP report, Motor Carrier transported cargo that had a length of 60 feet and eight inches, more than the 45 feet allowed under IC § 9-20-3-4. The Department offers an oversize permit that allows a carrier to transport a length longer than the statutory limit. Motor Carrier submitted a receipt for permit number 0488003884, presumably to demonstrate that Motor Carrier had a permit at the time of the traffic stop. Department records, however, show that this was a 90-day permit issued for a vehicle uninvolved with the traffic stop in question. Department records further show that while a permit was issued to this vehicle one week after the traffic stop, no permit had been issued to the vehicle in question at the time of the traffic stop.

Motor Carrier is required to possess a permit for carrying certain loads that exceed statutory limits at the time of transport. Among other reasons, this allows the Department to provide Motor Carrier a proper transport route. Moreover, Motor Carrier would have had to pay for the permit prior to possessing it.

It follows that Motor Carrier failed to obtain a permit before transporting cargo that required a permit; therefore, it is appropriate for Motor Carrier to receive a No Permit Civil Penalty. However, because Motor Carrier did not have a permit at the time of the traffic stop, Motor Carrier should not have been assessed a Permit Violation Civil Penalty. Based on this review, the Department will generate an updated bill for Motor Carrier.

### **FINDING**

Motor Carrier's protest is sustained in part and denied in part.

January 2, 2020

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